

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Parks & Recreation

AGENDA DATE: 07-26-05

CONTACT PERSON/PHONE: Dr. Norman C. Merrifield (915-541-4331)

DISTRICT(S) AFFECTED: 4

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Authorize the Mayor to sign:

(a) an ordinance granting a new lease to the Skyline Optimist Club regarding the Skyline Youth Park located at 505 Yvette, El Paso, Texas.

(b) a new lease with Skyline Optimist Club for the Skyline Youth Park located at 5050 Yvette, El Paso, Texas. The Mayor is required to sign this lease because it is attached as an exhibit to the ordinance referenced above. Since the Mayor has to sign the ordinance, then I believe that the Mayor also should sign the lease because it is a part of the ordinance.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This lease/ordinance is a renewal of a lease with the Skyline Optimist Club. This club was responsible for the development of the Skyline Youth Park located at 5050 Yvette, El Paso, Texas. Skyline Optimist desires to continue the development of park and recreational facilities at Skyline Youth Park for use by the citizens of the City of El Paso. The terms of the lease agreement is as follows:

(1) The area to be leased is known as the Skyline Youth Park located at 5050 Yvette Avenue, El Paso, Texas, and is further described as 70.926 acres of land, more or less, out of Section 6 and Section 7, Block 87, Township 1, Texas & Pacific Railroad Company Surveys, being part of the former Castner Range in El Paso County, Texas ("Premises").

(2) The term shall be for a primary term of ten (10) years, at the rate of \$10.00 (TEN AND NO/100 DOLLARS) per year, and shall automatically be extended for two additional one (1) year period under the same price, terms and conditions, unless terminated. This lease supersedes all prior agreements, whether written or oral, regarding the lease of the Premises by Skyline Optimist Club.

(3) As part of the consideration for this lease, Skyline Optimist agrees to raise private and public funds to be used for the development and construction of an outdoor restroom facility to be located behind the concession stand at or near the baseball fields on said Premise.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

NO

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

None

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

None

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN A LEASE AGREEMENT BETWEEN THE CITY OF EL PASO AND SKYLINE OPTIMIST CLUB FOR THE CONTINUED DEVELOPMENT OF PARK AND RECREATIONAL FACILITIES AS WELL AS SERVICES AT THE SKYLINE YOUTH PARK, LOCATED AT 5050 YVETTE AVENUE, EL PASO, TEXAS FOR THE TERM OF TEN (10) YEARS, WITH RENEWAL OPTIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor is hereby authorized to sign, on behalf of the City of El Paso, a new lease upon the following terms to the Skyline Optimist Club:

(1) The area to be leased is known as the Skyline Youth Park located at 5050 Yvette Avenue, El Paso, Texas, and is further described as 70.926 acres of land, more or less, out of Section 6 and Section 7, Block 87, Township 1, Texas & Pacific Railroad Company Surveys, being part of the former Castner Range in El Paso County, Texas ("Premises").

(2) The term shall be for a primary term of ten (10) years, at the rate of \$10.00 (TEN AND NO/100 DOLLARS) per year, and shall automatically be extended for two additional one (1) year period under the same price, terms and conditions, unless terminated. This lease supersedes all prior agreements, whether written or oral, regarding the lease of the Premises by Skyline Optimist Club.

(3) As part of the consideration for this lease, Skyline Optimist agrees to raise private and public funds to be used for the development and construction of an outdoor restroom facility to be located behind the concession stand at or near the baseball fields on said Premise.

(4) Said lease from the City of El Paso to the Skyline Optimist Club shall be in the form that is attached as Exhibit "A" and incorporated herein by reference for all purposes as if set forth verbatim.

PASSED AND APPROVED on this the ____ day of _____, 2005.

THE CITY OF EL PASO

ATTEST:

John Cook, Mayor

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Jennifer F. Callan
Assistant City Attorney

APPROVED AS TO CONTENT:

Norman C. Merrifield, Ed.D.
Director, Parks and Recreation Dept.

THE STATE OF TEXAS
COUNTY OF EL PASO

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§
§

LEASE AGREEMENT

This Lease Agreement ("Agreement"), made this the ____ day of _____, 2005, between the CITY OF EL PASO, a home rule municipal corporation ("CITY"), and SKYLINE OPTIMIST CLUB, a non-profit corporation ("SKYLINE").

WHEREAS, the United States of America conveyed land in the northeast to the CITY for park and recreational purposes on or about July 19, 1976. Said land has come to be known as Skyline Optimist Youth Park, which is located at 5050 Yvette Avenue, El Paso, Texas; and

WHEREAS, the CITY and the Northeast Civic Leaders Council, Inc., a non-profit corporation, entered into a joint use agreement to develop a portion of Skyline Youth Park on or about April 21, 1982. The Northeast Civic Leaders Council supported SKYLINE's request in 1984 to develop public park and recreational facilities at Skyline Youth Park; and

WHEREAS, the CITY granted SKYLINE the right to develop park and recreational facilities at Skyline Youth Park in 1984. Under said agreement, SKYLINE developed Skyline Youth Park for the benefit of the CITY from private and governmental funds; and

WHEREAS, SKYLINE desires to enter into a new lease agreement with the CITY for the continued development of park and recreational facilities at Skyline Youth Park for use by the citizens of the City of El Paso; and

WHEREAS, the CITY believes the continuation of the relationship with SKYLINE would further the objectives of all parties by increasing the availability of park and recreational facilities as well as services that would benefit the citizens of El Paso; and

NOW, THEREFORE, for and in consideration of the following mutual covenants and agreements of this Agreement, and other good and valuable consideration the CITY hereby grants a non-assignable right to SKYLINE to develop and maintain park and recreational facilities and services at the Skyline Youth Park located at 5050 Yvette Avenue, El Paso, El Paso County, Texas, as further described as 70.926 acres of land, more or less, out of Section 6 and Section 7, Block 87, Township 1, Texas & Pacific Railroad Company Surveys, being part of the former Castner Range in El Paso County, Texas ("Premises").

1.0 TERM AND RENT

1.1 Term of Agreement. This Agreement shall become effective on **August 1, 2005**, and shall be for a primary term of ten (10) years from that date. Said Agreement shall automatically be extended for two additional one (1) year period under the same price, terms and conditions, unless terminated as hereinafter provided in Section 6.0, *et seq.*, of this Agreement. In no event shall this Agreement extend beyond **August 1, 2017**.

(A) This Agreement supersedes all prior agreements, whether written or oral, regarding the lease of the Premises by SKYLINE.

1.2 Rent. SKYLINE will pay the CITY, in consideration for this Agreement, the sum of TEN AND NO/100 DOLLARS (\$10.00) per year for the lease term of this Agreement, as stated in Section 1.1 above. Said amount is to be paid in advance on the first (1st) day of August of each year during the lease term of this Agreement. If August 1st falls on a weekend or holiday, then said amount is to be paid on the following business day.

2.0 USE OF PREMISES

2.1 Facilities. The park and recreational facilities on or to be placed on the Premises shall be under the control of SKYLINE during the lease term of this Agreement, as stated in Section 1.1 above. SKYLINE understands and agrees that all such facilities are to be open to the public on a non-discriminatory basis.

2.1-1 Rental of Facilities. SKYLINE may rent the facilities on the Premises to organizations or individuals for functions that are suitable to a public recreational facility. The revenues from such rentals shall be used for the purpose of constructing and/or maintaining said facilities on the Premises.

(A) SKYLINE, its officers, agents, servants, employees, volunteers and third parties shall not discriminate on account of race, color, religion, sex or national origin, nor permit or allow any discrimination when renting the facilities under this Agreement. Rental of a facility covered by this Agreement shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

2.1-2 Admission to Events at Facilities. SKYLINE may charge a reasonable fee for admission to functions held at the facilities on the Premises that are open to the general public. The revenues from such admission fees shall be used for the purpose of constructing and/or maintaining said facilities on the Premises.

(A) SKYLINE, its officers, agents, servants, employees, volunteers and third parties shall not discriminate on account of race, color, religion, sex or national origin, nor permit or allow any discrimination when charging admission to a public function under this Agreement. Admission to a public function held on the Premises and thus, covered by this Agreement, shall not be denied to any person described in Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

2.2 Improvements. As part of the consideration for this Agreement, SKYLINE agrees to raise private and public funds to be used for the development and construction of an outdoor restroom facility to be located behind the concession stand at or near the baseball fields on said Premises. SKYLINE expressly warrants that the restroom facility will be completed within a reasonable time not exceeding five (5) years from the date this Agreement is finalized by the parties. Said improvements will be at no cost to the CITY.

2.2-1 SKYLINE acknowledges and warrants that all architectural design of the restroom facility and any improvements to such shall complement existing CITY park property and design.

2.2-2 SKYLINE further understands and agrees that the architectural design as well as the plans and specifications for the restroom facility and any improvements to such shall be subject to the approval of the CITY.

2.2-3 SKYLINE agrees that it shall not construct any additional improvements nor make any additions or alterations on the Premises without first obtaining the written permission of the CITY.

(A) SKYLINE understands and agrees that it shall submit to the CITY the plans and specifications for any proposed improvement, additions, alterations or changes to the Premises, not covered by this Agreement, for approval from the CITY before commencing work on such.

2.2-4 The parties agree that all facilities, improvements and structures placed on the Premises by SKYLINE shall remain the property of SKYLINE until the termination of this Agreement. Upon termination of this Agreement, said facilities, improvements and structures shall become the property of the CITY.

2.4 Repairs. SKYLINE shall keep the facilities, improvements and property on the Premises in good condition and repair during the lease term of this Agreement, as stated in Section 1.1 above. SKYLINE shall at all times during the lease term of this Agreement keep the facilities, improvements and property on the Premises clean, orderly and in an attractive condition. In the event of damage or destruction by fire or other casualty to the Premises, SKYLINE shall promptly restore or replace the same in a reasonable time.

2.5 Maintenance of Grounds. The CITY shall be responsible for the maintenance of the grounds that consist of the athletic fields, playground and picnic areas ("park"). Such maintenance of the park shall consist of the following: (a) litter pick-up in turf area, only, before mowing; (b) mowing; and (c) weed trimming through out the park and around playground equipment areas.

2.6 Cutting or Filling. No cuts or fills shall be done on the property nor any grubbing, grading or moving of earth performed, unless such work has received the prior written approval of the CITY's Engineer and Director of the Parks & Recreation Department, and a grading permit obtained if required by the grading ordinance of the CITY.

2.7 Utilities. SKYLINE shall be responsible for the payment of all utilities that are consumed for the use of the meeting hall community center (Account #1905-1785-02). The CITY shall be responsible for the payment of utilities, up to a certain kilowatt, as follows:

2.7-1 Ball field #1 (Acct: 2110-1570-01): 6000KWH during the months of January, February, March, November and December; 5300KWH during the months of April, May, September and October; and 6600KWH during June, July and August. SKYLINE understands and agrees that it shall pay for the consumption of utilities on ball field #1 (Acct: 2110-1570-01) over and above the kilowatts stated above. SKYLINE further agrees that the use of lighting on this field will be done in accordance with Section 13.24.040, El Paso Municipal Code.

2.7-2 Ball field #2 (Acct: 2110-1580-01): 6000KWH during the months of January, February, March, November and December; 5300KWH during the months of April, May, September and October; and 6600KWH during June, July and August. SKYLINE understands and agrees that it shall pay for the consumption of utilities on ball field #2 (Acct: 2110-1580-01) over and above the kilowatts stated above. SKYLINE further agrees that the use of lighting on this field will be done in accordance with Section 13.24.040, El Paso Municipal Code.

2.7-3 Concession Stand (Acct: 2110-1590-01): 1950KWH during the year. SKYLINE understands and agrees that it shall pay for the consumption of utilities at the concession stand (Acct: 2110-1590-01) over and above the kilowatts stated above. SKYLINE further agrees that the use of lighting at the concession will be done in accordance with Section 13.24.040, El Paso Municipal Code.

2.7-4 Tennis and Outdoor Basketball Courts (Acct: 1905-1787-02): 4700KWH during the months of January, February, March, November and December; and 4200KWH during the months of April, May, June, July, August, September and October. SKYLINE understands and agrees that it shall pay for the consumption of utilities on the tennis and outdoor basketball courts (Acct: 1902-1787-02) over and above the kilowatts stated above. SKYLINE further agrees that the use of lighting on these courts will be done in accordance with Section 13.24.040, El Paso Municipal Code.

2.7-5 Gymnasium and Indoor Basketball Courts (Acct: 1905-1788-02): 7200KWH during the year. SKYLINE understands and agrees that it shall pay for the consumption of utilities in the gymnasium and indoor basketball courts (Acct: 1905-1788-02) over and above the kilowatts stated above. SKYLINE further agrees that the use of lighting in the gymnasium and indoor basketball courts will be done in accordance with Section 13.24.040, El Paso Municipal Code.

2.7-6 The CITY will be responsible for the payment of water consumed on said Premises during the term of the Agreement. SKYLINE will be responsible for the payment all other utilities not referenced above.

2.8 Improper Use. SKYLINE shall not permit on the Premises any entertainment, amusement or other activity that violates any federal, state and local laws and regulations, all City ordinances and all codes and regulations.

3.0 CONTRACTUAL RELATIONSHIP

3.1 SKYLINE is an independent contractor. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or sub-contractors.

3.1-1 As an independent contractor, SKYLINE understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to SKYLINE's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Agreement.

3.1-2 SKYLINE shall select its own employees and such employees shall be and shall act under the exclusive and complete supervision and control of SKYLINE.

3.2 SKYLINE shall not receive any compensation or benefits from the CITY.

3.3 SKYLINE understands and expressly agrees that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Agreement as a governmental entity for the purpose of performing a governmental function.

4.0 INSURANCE

4.1 Fire and Casualty Insurance. SKYLINE shall keep all facilities and improvements on the Premises insured with a solvent insurance company that is authorized to do business in Texas, to the full amount of insurance procurable, for the benefit of SKYLINE and the CITY, as their interests may appear. A Certificate of Insurance indicating such coverage will be provided to the CITY within **ten (10) days** of the execution of this Agreement. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Agreement.

4.2 Liability Insurance. SKYLINE understands and warrants that it shall provide liability insurance coverage in no less than the following amounts: \$250,000 per individual per occurrence for personal injury; \$500,000 per occurrence for personal injury for more than one person; \$100,000 for property damage (including damage to the facilities and the premises) for the term of this Agreement. The CITY, as owner of the Premises, shall be named as an additional named insured under the coverage. A Certificate of Insurance indicating such coverage will be provided to the CITY within **ten (10) days** of the execution of this Agreement. Failure to provide the required proof of insurance, naming the CITY as an additional insured, shall result in the cancellation of this Agreement.

4.3 Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless **thirty (30) days advance notice of cancellation or intent not to renew** is given in writing to the Director of the Parks & Recreation Department by the insurance company.

SKYLINE shall give written notice to the Parks & Recreation Department Director **within five (5) days** of the date upon which total claims by any party against SKYLINE reduce the aggregate amount of coverage below the amounts required by this Agreement.

4.4 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the CITY, its elected and appointed officials, officers, agents or employees.

4.5 Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance, so long as it is customary in the industry and under Texas law for such insurance to be primary, to any other insurance available to the CITY, the Additional Insured, with respect to claims arising hereunder and that the insurance applies separately to each insured.

4.6 Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to SKYLINE for any further premium payment and has no right to recover any premiums from the CITY.

4.7 Sub-contractor(s). In the event that SKYLINE contracts with anyone to make improvements on the Premises, SKYLINE shall require all subcontractor(s) to carry insurance naming the CITY as an additional insured and meeting all of the above requirements.

5.0 INDEMNIFICATION

5.1 SKYLINE UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENCE, GROSS NEGLIGENCE, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF SKYLINE, ITS AGENTS, SUBCONTRACTORS, EMPLOYEES, OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS AGREEMENT.

5.1-1 Without modifying the conditions of preserving, asserting or enforcing any legal liability against the CITY as required by the City Charter or any law, the CITY will promptly forward to SKYLINE every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.

5.1-2 In addition, SKYLINE shall promptly advise the CITY in writing of any claim or demand against the CITY or SKYLINE known to SKYLINE related to or arising out of SKYLINE's activities under this Agreement.

5.1-3 SKYLINE understands and agrees that it will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the SKYLINE may deem expedient; and 3) defend or cause to be defended on behalf of the CITY all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages.

5.1-4 SKYLINE understands and agrees that it will pay all final judgments establishing liability of the CITY in actions defended by SKYLINE pursuant to this section along with all attorneys' fees and costs incurred by the CITY including interest accruing to the date of payment by SKYLINE, and premiums on any appeal bonds.

5.1-5 The CITY, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving SKYLINE of any of its obligations under this paragraph.

5.2 Indemnification of Subcontractor(s). In the event that SKYLINE contracts with anyone to make improvements on the Premises, SKYLINE shall require all of its subcontractor(s) to include in their subcontracts indemnity in favor of the CITY in substantially the same form as in Paragraph 5.1 *et seq.*, above.

6.0 TERMINATION. This Agreement may be terminated as provided herein.

6.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

6.2 Termination by Either Party. It is further understood and agreed by the SKYLINE and the CITY that either party may terminate this Agreement, in whole or in part, upon **thirty (30) days** written notice if the other party fails to perform any of its material obligations hereunder and fails to completely cure the breach.

6.3 Termination by CITY. If SKYLINE ceases to use or occupy the Premises for the purposes herein contemplated for a time period of more than twelve (12) continuous months, or if SKYLINE defaults in any of its obligations under this Agreement and fails to correct such default within **thirty (30) days** written notice, CITY may cancel said Agreement and take possession of the property. In such an event, all rights of SKYLINE in the Premises, including buildings, facilities and improvements, shall then terminate. Any waiver by the CITY of any breach of any of SKYLINE's obligations shall not be deemed a continuing waiver and shall not prevent the CITY from exercising any remedy it may have for any succeeding breach of the same or another obligation of SKYLINE.

6.4 Time of Performance Termination – Force Majeure. Neither party to this Agreement will be liable for failure to comply with any term of this Agreement when such failure is caused by an event of war, fire, earthquake, flood, strike, any law, rule, regulation or act of governmental authority, or any other act, event, cause or occurrence rendering a party to this

Agreement unable to perform its obligations, which is not within its reasonable control. The party affected by such event will immediately notify the other party in writing.

6.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that may be lawfully asserted against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

6.5-1 Upon termination of this Agreement, ownership of all improvements done by SKYLINE on the Premises shall revert to the CITY.

7.0 GENERAL PROVISIONS

7.1 Assignments and Subletting. SKYLINE shall not assign this Agreement nor sublet the Premises or any part thereof without the prior written consent of the CITY, except that SKYLINE may grant permission, in the nature of licenses (as the term is used in real property law), but not in the nature of leases or subleases, for the use of the property for the purposes contemplated by this Agreement, but such permission shall not impair or diminish the rights of the CITY hereunder. The CITY shall have the right of first refusal on all licenses.

7.2 Liens and Encumbrances. SKYLINE shall not give nor permit any liens or encumbrances on the Premises, including but not limited the facilities, buildings, improvements, and park. Upon termination of this Agreement, SKYLINE shall peacefully surrender such Premises, including facilities, building, improvements and park, to the CITY free of all such liens or encumbrances. **SKYLINE shall defend and indemnify the CITY against any liability and loss of any type arising from any such lien or encumbrance on the Premises, including facilities, buildings, improvements and park, together with reasonable attorney's fees, costs and expenses incurred by the CITY in negotiating, settling, defending or otherwise protecting against such liens or encumbrances.**

7.3 Inspections. The CITY shall have the right to enter the Premises, including the buildings, facilities or improvements at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Agreement.

7.4 Outside Lighting. Outside lighting, except security lighting, on the property shall be operated during the established park hours, as set forth in Section 13.24.040, El Paso Municipal Code. Outside lighting will not be operated at such hours or with such intensity as to constitute a nuisance to the occupants of other property in the neighborhood. If this provision is violated, the CITY may require any such lighting to be extinguished, changed or removed at SKYLINE's expense.

7.5 Signs. All signs on the Premises, including building, facilities and improvements, shall comply with all building code and other relevant ordinances of the CITY. The size, design and location of all signs shall be subject to the approval of the Director of the Parks & Recreation Department prior to installation.

7.5-1 SKYLINE shall have the right to sell advertising on the fence of the ball fields provided no advertisements shall be placed on thereon that are fraudulent or illegal. Except for signs placed on the fences of the ball fields, signs on the remainder of the Premises shall be limited to those identifying the uses conducted on the property and those necessary for information and directional purposes.

7.6 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given **within five (5) calendar days**, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

7.7 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

7.8 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY and SKYLINE. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

7.9 Attorney's Fees. In any action brought by either party for the enforcement of any provision of this Agreement, the successful party shall be entitled to recover reasonable attorney's fees.

7.10 Restrictions and Reservations. This Agreement is subject to the following restrictions, reservations, exceptions and conditions:

7.10-1 This Agreement is subject to all rights of way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land.

7.10-2 By the acceptance of this Agreement, SKYLINE for itself, its successors and assigns, acknowledges notice that the property hereby leased was formerly used by the Department of the Army for military training purposes, and was subject to contamination by the introduction of unexploded shells, rockets, and other explosive charges either upon or below the surface thereof, and agree that by reason of this contamination some risk is involved in the exercise of SKYLINE's rights of control of said leased property. SKYLINE, its successors and assigns, hereby releases the CITY, the United States of America, their officers, agents, servants, employees, staff, and representatives from and hereby assumes all liability and risk for injuries or damages to persons or property arising out of SKYLINE's use and enjoyment, directly or indirectly, of the leased property and the rights herein granted. SKYLINE hereby releases and also undertakes and **agrees to save and hold harmless** the CITY, the United States of America,

the Department of Defense, the Administrator of General Services, their agents, officers, employees, staff, contractors and representatives from any and all actions, proceedings, demands, costs, expenses, claims, damages, or injuries sustained or hereafter sustained to the person or property of or by any person whomsoever, resulting from, directly or indirectly the possible contaminated conditions on the property herein leased and SKYLINE's exercise of the rights herein granted.

7.10-3 SKYLINE and all persons who, through contractual or other arrangements, are authorized to operate on the Premises or to provide services or benefits thereon, covenant and agree to comply with all regulations of the Department of the Interior in effect on the date hereof (43 CFR 17) issued under Title VI, Civil Rights Act of 1964.

7.10-4 This Agreement is further subject to all the obligations, conditions, covenants and agreements contained in the quitclaim deed dated June 19, 1976, by which the United States of America conveyed the herein described property to the CITY for park and recreational purposes, which obligations, conditions, covenants and agreements SKYLINE hereby agrees, by the execution of this Agreement, to assume and be bound by. A copy of such quitclaim deed is attached hereto and incorporated by reference for all purposes.

7.10-5 There is reserved to the CITY and its successors or assigns the prior right to use any of the Premises herein described to construct, operate and maintain structures and facilities including but not limited to canals, ditches, roadways, electrical transmission lines, dams, dikes, reservoirs, pipelines, telephone and telegraph lines without any payment made by the CITY or its successors or assigns for such right.

7.11 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

7.12 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso.

7.13 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

7.14 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State

of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

7.15 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY: City of El Paso
Attention: Mayor's Office
Two Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

COPY TO: Parks and Recreation Department
Two Civic Center Plaza, 6th Floor
El Paso, Texas 79901-1196

LESSEE: Skyline Optimist Club
Attention: Park Chairman
PO Box 4221
El Paso, Texas 79914

7.16 Warranty of Capacity to Execute Agreement. The person signing this Agreement on behalf of SKYLINE warrants that he/she has the authority to do so and to bind SKYLINE to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement, and all attachments, in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

(Signature Follow on Next Page)

07/13/2005 15:23 915-541-4710

CITY ATTORNEYS OFFICE

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Executed, this the _____ day of _____, 2005.

THE CITY OF EL PASO

ATTEST:

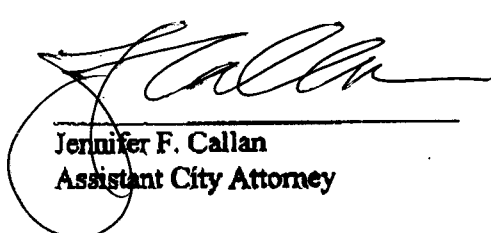
John Cook, Mayor

Richarda Duffy Mornsen, City Clerk

SKYLINE OPTIMIST CLUB

Gloria M. Delgado
Name: Gloria M. Delgado
Title: President (7-13-05)

APPROVED AS TO FORM:



Jennifer F. Callan
Assistant City Attorney

APPROVED AS TO CONTENT:



Norman C. Merrifield, Ed.D.
Director, Parks and Recreation Department